

EXHIBIT 1



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Via Email and U.S. Mail

October 12, 2007

Cass W. Christenson, Esq.
McKenna Long & Aldridge LLP
1900 K Street, NW
Washington, DC 20006-1108

Re: *LG.Philips LCD Co., Ltd. v. ViewSonic Corp., et al.*
USDC Case No. 04-343 JJF

Dear Cass:

I am in receipt of your letter of today seeking to follow up on yesterday's telephone conference with the Special Master. We understand the current outstanding issues to be comprised of the following:

1. ViewSonic's remedies associated with the September 19-20, 2007 deposition of LPL;
2. ViewSonic's remedies associated with the October 10-12, 2007 deposition of LPL; and
3. ViewSonic's right to recover its attorneys' fees under 35 U.S.C. § 285.

To the extent your letter intended to suggest that ViewSonic's rights and remedies under Items 1 or 2 is limited to fees or costs, that assertion is mistaken. Likewise, we see at least two threshold subsidiary issues to Item 3 above, namely: ViewSonic's pending motion to amend its answer and the entry of a dismissal with prejudice of the case as against ViewSonic. With regard to these two subsidiary issues, we would ask that LPL advise us of its position on the following:

1. Does LPL either contend or intend to argue that the failure of ViewSonic's original answer to expressly plead the defense of inequitable conduct has any bearing on the scope of the evidence and/or the issues the Court may consider in conjunction with a motion under 35 U.S.C. § 285 for attorneys' fees by ViewSonic? If so, what impact does it have?

14003.1

WILMINGTON, DE

WASHINGTON, DC

LOS ANGELES, CA



Cass W. Christenson, Esq.

October 12, 2007

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2. Is LPL willing to stipulate to a dismissal with prejudice of the instant case against ViewSonic, or will ViewSonic be required to file a motion for dismissal with prejudice in conjunction with its request for attorneys' fees under 35 U.S.C. § 285?

Once we know your position with regard to these issues, we will be able to meaningfully consider the schedule you propose and/or discuss alternative schedules for these matters.

I look forward to your early response.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott R. Miller".

Scott R. Miller

cc: All counsel of record (via email)

EXHIBIT 2

**McKenna Long
& Aldridge, LLP**
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October 15, 2007

VIA E-MAIL AND U.S. MAIL

Scott Miller, Esq.
Connolly Bove Lodge & Hutz, LLP
333 South Grand Avenue, Suite 2300
Los Angeles, CA 90071

**Re: *LG.Philips LCD Co., Ltd. v. Tatung, et al.*,
Civil Action No. 04-343 (JJF)**

Dear Scott:

I write in response to your October 12, 2007 letter, responding to my letter proposing a briefing schedule.

Regarding your suggestion that ViewSonic may seek sanctions other than costs or fees regarding LPL's deposition, we disagree that such remedies are appropriate to seek or to recover. The Special Master previously and correctly declined ViewSonic's request for draconian sanctions. LPL opposes any award of sanctions, and objects to any request for sanctions in a form previously requested and declined. Further, we assume that ViewSonic will discuss with us in advance any sanctions issues that ViewSonic intends to raise that were not previously addressed at the September 21, 2007 teleconference.

Your letter also requests for LPL to state its position concerning "two subsidiary issues": (1) whether LPL may argue that ViewSonic's failure to assert an inequitable conduct defense impacts any motion by ViewSonic that this is an exceptional case, and (2) whether LPL is willing to stipulate to dismissal with prejudice as between LPL and ViewSonic. As stated in my October 12, 2007 letter, LPL continues to reserve any and all objections and arguments concerning any motions that ViewSonic may file in this case.

LPL responds as follows:

1. LPL is evaluating the significance of ViewSonic's failure to allege an inequitable conduct defense. To assist our consideration of that issue, please confirm the grounds for

Scott Miller, Esq.
October 15, 2007
Page 2

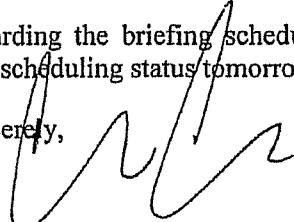
ViewSonic's anticipated argument regarding inequitable conduct and 35 U.S.C. § 285. ViewSonic apparently intends to argue that this is an exceptional case based on alleged inequitable conduct, the same issue recently asserted in ViewSonic's proposed inequitable conduct defense in the pending motion to amend. The scope and/or consideration of that argument may indeed be foreclosed or limited based on ViewSonic's failure to plead a proper and timely defense. In addition, the belated assertion of the defense in this case has prevented LPL from knowing or obtaining discovery regarding the defense, which would substantially prejudice LPL's ability to respond to an inequitable conduct argument. If other issues or facts are implicated by ViewSonic's position regarding 35 U.S.C. § 285, LPL needs that information now, which could impact any briefing schedule.

2. Your letter proposes a stipulation for dismissal with prejudice of the "case against ViewSonic". We will respond to this issue under separate cover.

3. If there is a settlement between LPL and ViewSonic, then scheduling issues or further motions by ViewSonic will be moot. Further, in cooperating as to a briefing schedule, we have proposed the schedule while reserving all of LPL's rights, and with the intent of obtaining a prompt determination in LPL's favor on any exceptional case motion. Thus, we anticipate that the proposed briefing schedule will avoid the need for further submissions and/or hearings. LPL reserves all of its rights, including the right to make a complete record and present evidence, in the unlikely event that further proceedings are warranted. *See, e.g., W.L. Gore & Assocs., Inc. v. Oak Materials Group, Inc.*, 424 F. Supp. 700 (D. Del. 1976) (rejecting exceptional case argument preliminarily, avoiding need for further proceedings that would otherwise be appropriate). Also, we reserve the right to seek fees and costs in opposing any exceptional case motion, as there is no basis for ViewSonic to allege any fraud on the PTO regarding these patents.

We look forward to ViewSonic's position regarding the briefing schedule as soon as possible, so that we can advise the Special Master of the scheduling status tomorrow.

Sincerely,


Cass W. Christenson

CWC:ea

cc: Counsel of Record (via e-mail)

EXHIBIT 3

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

L. G. PHILIPS LCD CO., LTD., :
Plaintiff, : Civil Action No.
v. : 04-343-JJF
TATUNG CO.; TATUNG COMPANY OF :
AMERICA, INC.; and VIEWSONIC :
CORPORATION, :
Defendants. :

Teleconference proceedings in the
above-captioned matter, before Adam D. Miller,
Registered Professional Reporter and Certified
Shorthand Reporter, on Thursday, June 28, 2007,
beginning at approximately 3:18 p.m.

BEFORE: VINCENT J. POPPITI, SPECIAL MASTER

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477
www.wilfet.com

Page 38	Page 40
<p>1 to speak to it yet. You'll get a chance to come back 2 to it, because it's certainly a critical issue. And it 3 seems to me that the representation isn't -- is either 4 not the same or it's certainly not as pure as it was. 5 And I'll let you speak to that in a moment.</p> <p>6 MR. MILLER: With regard to the issue 7 regarding an inequitable conduct defense -- I mean, it 8 is an issue in the case. We're entitled to discovery 9 on issues in the case. We've had it in our discovery 10 responses for some time. We've been awaiting the 11 Markman ruling so that in making our application to the 12 Court for purposes of the inequitable conduct defense, 13 we would know exactly what the claim terms made. And 14 instead of going and having an application made that 15 could be no longer useful or changed, based on the 16 constructions that the Court -- that Your Honor was 17 going to propose in the report, we decided to wait for 18 that and are in the process of finalizing our 19 application for leave to file that.</p> <p>20 But I don't believe that in any way 21 constricts the ability to take defenses -- take 22 discovery on an issue that's clearly joined in the case 23 by the parties. You know, there's no reason why we 24 couldn't take discovery relating to a Tatung product if</p>	<p>1 about whether the requests were broad or whether they 2 were limited. Do you want to address that before I 3 make any comments?</p> <p>4 MR. MILLER: Yes, Your Honor. I think the 5 request is intended to be broad, in the sense that it 6 asks for the parts of an LCD module. And, again, at 7 the end of this request, we put in a statement that 8 says we're not seeking every document referencing an 9 LCD module; rather we're looking for information 10 regarding the structure, function, and assemblage of 11 parts of an LCD module since January 1, 1997, to the 12 present.</p> <p>13 So it's not about -- obviously, if it's the 14 same -- if they're using the same first -- what we 15 would call the first and second frames of the 16 flat-panel display device, they don't have to produce 17 it 25 times. But if they're using a different first 18 and second frame, having different mounting locations, 19 then obviously they do need to produce them for 20 different variations of that.</p> <p>21 And our whole idea in these requests, by 22 having this -- the way they were framed was to try to 23 not have an overburdensome discovery request that would 24 seek every document related to every product they've</p>
Page 39	Page 41
<p>1 we felt like that was appropriate for presentation; and 2 the mere fact that it's a Tatung product wouldn't 3 prohibit us from asking discovery about it.</p> <p>4 Similarly, an allegation made by another 5 party -- an issue clearly joined in the case -- is not 6 beyond the scope of discovery that we're not entitled 7 to propound. It's that discovery, ultimately, that 8 gives the comfort of being prepared to make the 9 allegations of inequitable conduct.</p> <p>10 As Your Honor may know, there is a spate of 11 cases that came out criticizing counsel for freely 12 filing it. And not that Tatung did here. I just think 13 it was a situation that, you know, cautioned counsel to 14 look at things through discovery and then approach the 15 inequitable conduct defense. And that's the path we 16 chose. I think Tatung chose a different path; and they 17 had better information than we had at the time to be 18 able to make the allegations.</p> <p>19 SPECIAL MASTER POPPITI: Okay. Well, let 20 me suggest this before hearing the comment with respect 21 to the representation. There is little if any question 22 that the information that's being sought -- and I 23 haven't heard you address the specifics of the requests 24 themselves, though, Mr. Miller. Mr. Christensen talked</p>	<p>1 ever made; but rather to get something targeted to show 2 how different products would be different as it relates 3 to the structure, function, and assembly of those 4 components.</p> <p>5 (Discussion held off the record.)</p> <p>6 MR. MILLER: The request seeks products and 7 information relating to products from January 1, 1997, 8 to the present. And so it's not about a single product 9 but about trying to be limited in the sense that -- not 10 trying to get every product they ever made that would 11 be the same, but products that would be different.</p> <p>12 And so, to the extent a module has a 13 different -- has the same structure and assembly, we 14 wouldn't need multiple iterations of that same product. 15 All we would want would be where the structure, 16 function, or assemblage is different; then we would 17 obviously want those.</p> <p>18 SPECIAL MASTER POPPITI: Okay. I do want 19 to hear some comments about the initial representation; 20 because I am satisfied that, certainly, the discovery 21 that is being sought goes to the issue involving 22 invalidity. I'm mindful that Viewsonic has not pled 23 inequitable conduct. I am not confident that -- I'm 24 rather confident that the fact that it has not been</p>

11 (Pages 38 to 41)

Page 42	Page 44
<p>1 pled by Viewsonic would not preclude Viewsonic from 2 taking discovery on the issue. It is in the case. 3 I understand that the time for which 4 Viewsonic would have to amend its own pleadings is 5 past. I'm not convinced that if the discovery is -- 6 points in the direction of inequitable conduct, I'm not 7 convinced that the Court wouldn't ultimately look to an 8 application to either conform the evidence to what is 9 presented -- conform the pleadings to what the evidence 10 has been or even an application at this juncture to 11 amend wouldn't be entertained by the Court. 12 I'm also confident that the discovery, as 13 propounded, would go to the damages issue. 14 What I do want some discussion on or 15 further comment on, Mr. Christenson, is a 16 representation that was made during the course of the 17 December 28th hearing and the comments that you made 18 today. It seems to me that you backed away from the 19 representation.</p> <p>20 MR. CHRISTENSON: Your Honor, this is Cass 21 Christenson. I really need to address this -- and I 22 appreciate the opportunity -- because I think we're 23 getting a little bit away from what really happened. 24 And the reason we're doing that is that Mr. Miller has</p>	<p>1 SPECIAL MASTER POPPITI: Just give me one 2 moment. 3 MR. CHRISTENSON: -- and whether we had 4 documents specific to that request -- 5 SPECIAL MASTER POPPITI: Give me one 6 moment. What page, please. 7 MR. CHRISTENSON: In the transcript, Your 8 Honor. It starts at page 120. 9 SPECIAL MASTER POPPITI: Right. 10 MR. CHRISTENSON: And I'm just pulling it 11 up myself. But it was a -- it was early in the hearing 12 on Viewsonic motion for technical discovery. And we 13 were discussing one of the disputes. One of the points 14 of contention was that the discovery that Viewsonic was 15 seeking was overly broad because of the time -- there's 16 no time limit. 17 And at that time Viewsonic's purported 18 basis for the discovery was validity. And later, only 19 much later, did they decide to go much broader and try 20 to assert that this also relates to damages, which I'll 21 be happy to address. 22 But going back to page 120, we were talking 23 about Requests 82 and 83 and others in this area, 24 including the ones we're discussing now. And</p>
<p>1 asserted, incorrectly, that the agreement that was made 2 to limit the scope had something to do with this 3 purported misrepresentation. And if we need to 4 revisit -- 5 SPECIAL MASTER POPPITI: No, I don't think 6 he's saying that they are -- Mr. Miller didn't say 7 misrepresentation. 8 I don't think I heard you say that, 9 Mr. Miller. Did you? 10 MR. MILLER: No, I didn't say that, Your 11 Honor. 12 MR. CHRISTENSON: Your Honor, I may be 13 remembering what was in the papers. But, in any event, 14 Mr. Miller was asserting incorrectly that the 15 representation that was made in the hearing somehow 16 resulted in the agreement; when, in fact, that is not 17 true. 18 The agreement was made much earlier than 19 the representation that Mr. Miller was alluding to. 20 And we've shown that to you in the past in a transcript 21 of -- it's pages -- it's starts at page 120, the 22 discussion that led to the agreement. And that -- much 23 later in the transcript we were talking about the 24 specific document request --</p>	<p>1 Mr. Miller acknowledged there was a fundamental issue 2 we have that relates to the requests generally. 3 And you suggested we should talk about a 4 date for a time period. 5 I had pointed out that for documents to be 6 relevant to validity, as a matter of law, they would 7 need to be for the appropriate time period, which would 8 have to predate the patents. They have to be prior. 9 You know, prior art, obviously, has to be prior. 10 So we went back and forth on what should be 11 an appropriate date. Mr. Miller suggested on page 121 12 maybe we should pick the patent issuance date; but then 13 he also agreed that we could pick another date that 14 would make sense. 15 So you allowed us on the record to discuss 16 what would be an appropriate date based on what 17 everyone knows, which is that validity discovery has to 18 be limited in the time. So we had that discussion. 19 And on page 122 I suggested the end of 1998. 20 And Mr. Miller stated on line 18, "That's 21 fine, Your Honor." 22 And then we agreed that that limitation 23 would apply to the entire set of discovery that was 24 being addressed, which is the same discovery we're</p>
12 (Pages 42 to 45)	

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1 **CERTIFICATION**

2
3
4 I, ADAM D. MILLER, Registered Professional
5 Reporter, certify that the foregoing is a true and
6 accurate transcript of the foregoing teleconference, at
7 the time, place and on the date herein before set
8 forth.

9 I further certify that I am neither
10 attorney nor counsel for, not related to nor employed
11 by any of the parties to the action; further, that I am
12 not a relative or employee of any attorney or counsel
13 employed in this case, nor am I financially interested
14 in this action.

15

16

17

18 _____
19 Adam D. Miller
 Registered Professional Reporter, Notary Public,
 and Certified Shorthand Reporter of the State of
 Delaware #109-RPR (Exp. 01-31-2008)

20

21

22

23

24

EXHIBIT 4

Hearing

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

PHILLIPS, L.G., LCD CO., LTD,)
)
Plaintiffs,) C.A. No. 04-343 (JJF)
)
v.)
)
TATUNG CO., TATUNG COMPANY OF)
AMERICA, INC., and VIEWSONIC)
CORPORATION,)
)
Defendants.)

Hearing of above matter taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, in the law offices of BLANK ROME, LLP, 1201 North Market Street, Wilmington, Delaware, on Monday, October 8, 2007, beginning at approximately 6:00 p.m., there being present:

BEFORE: THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

THE BAYARD FIRM
RICHARD D. KIRK, ESQ.
222 Delaware Avenue, Suite 900
Wilmington, Delaware 19899
for Plaintiffs

CORBETT & WILCOX
Registered Professional Reporters
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(302) 571-0510
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Hearing

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1 infringement and the case for the defenses.

2 And we -- our understanding of the case law
3 is that the Court is divested of jurisdiction of those
4 issues but not necessarily of whether it's an
5 exceptional case. But there ought to be a schedule for
6 that and a presentation of that issue to the Court.
7 Those are issues properly directed, I believe, to the
8 Court. They are not discovery issues.

9 SPECIAL MASTER POPPITI: Well, here is what
10 I think would be important for me to do, and maybe it
11 makes sense to confer further with your leads as well.
12 I have had some conversation with Judge Farnan, and I
13 had that conversation on Thursday of last week, I
14 believe, because at the time that I had the
15 conversation, I did not have the most recent submittal
16 from LPL advising of the covenant not to sue, so it -- I
17 don't have my notes in front of me, but I am fairly
18 certain it was on Thursday.

19 I think it's going to be important for me to
20 have some conversation with the Court sometime during
21 the course of the day tomorrow so I can learn from him
22 what he would want me to be doing with any of the
23 applications that are being -- that you have advised me
24 of today, including the exceptional case application.

Hearing

Page 13

1 C E R T I F I C A T E

2 STATE OF DELAWARE:

3 :

4 NEW CASTLE COUNTY:

5 I, Renee A. Meyers, a Registered Professional
6 Reporter, within and for the County and State aforesaid,
7 do hereby certify that the foregoing teleconference was
8 taken before me, pursuant to notice, at the time and ...
9 place indicated; that the teleconference was correctly
10 recorded in machine shorthand by me and thereafter
11 transcribed under my supervision with computer-aided
12 transcription; that the foregoing teleconference is a
13 true record; and that I am neither of counsel nor kin to
14 any party in said action, nor interested in the outcome
15 thereof.

16 WITNESS my hand this 10th day of October A.D.
17 2007.

18

19

20 RENEE A. MEYERS

21 REGISTERED PROFESSIONAL REPORTER

22 CERTIFICATION NO. 106-RPR

23 (Expires January 31, 2008)

24

EXHIBIT 5

Hearing

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

PHILLIPS, L.G., LCD CO., LTD,)
)
Plaintiffs,) C.A. No. 04-343 (JJF)
)
v.)
)
TATUNG CO., TATUNG COMPANY OF)
AMERICA, INC., and VIEWSONIC)
CORPORATION,)
)
Defendants.)

Hearing of above matter taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, in the law offices of BLANK ROME, LLP, 1201 North Market Street, Wilmington, Delaware, on Wednesday, October 24, 2007, beginning at approximately 3:05 p.m., there being present:

BEFORE: THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

THE BAYARD FIRM
RICHARD D. KIRK, ESQ.
222 Delaware Avenue, Suite 900
Wilmington, Delaware 19899
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Hearing

Page 2

1 APPEARANCES (Continued) :

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4 for Plaintiffs

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7 for Defendant Tatung Co.

8
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14 for Defendant ViewSonic Corporation

15 RASKIN PETER RUBIN & SIMON LLP
TRACY ROMAN, ESQ.
16 1801 Century Park East, 23rd Floor
Los Angeles, California 90071
17 For Defendant ViewSonic Corporation

18
19
20
21
22
23
24

Hearing

Page 3

1 SPECIAL MASTER POPPITI: Let's go back
2 through that, Mr. Kirk, with a roll call, please, so
3 that we have everything for the court reporter.

4 MR. KIRK: Yes, Your Honor. This is Richard
5 Kirk from the Bayard Firm here in Wilmington for the
6 plaintiff, LG Phillips, LCD Company, Ltd., and with me
7 on the line is my colleague, Cass Christenson, from
8 McKenna, Long & Aldridge in Washington.

9 MS. CRAMER: Good afternoon, Your Honor.
10 It's Kristen Cramer with Connolly, Bove in Delaware.
11 Also on the phone with me is Scott Miller and Keith
12 Fraser from our L.A. office, and Tracy Roman from the
13 Raskin Peter firm also in L.A.

14 SPECIAL MASTER POPPITI: Thank you.

15 MS. GAZA: Good afternoon, Your Honor. Anne
16 Gaza on behalf of the Tatung defendants.

17 SPECIAL MASTER POPPITI: Thank you. Will
18 anyone else be joining, Ms. Gaza?

19 MS. GAZA: No, Your Honor.

20 SPECIAL MASTER POPPITI: Thank you.

21 MS. GAZA: Thank you.

22 SPECIAL MASTER POPPITI: I have had the
23 opportunity, of course, to read your submittals and to
24 review case law that you have cited in those submittals.

Hearing

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1 And what I want to get a handle on first is the process
2 that you both described, whether it's in the post
3 briefing chronology that LPL has offered or in the event
4 chronology, if you will, with dates certain that
5 ViewSonic has offered.

6 The process that's being proposed is, if you
7 will, a stop and start process. And I am not sure that
8 that is the only way that we can move this matter along
9 efficiently and bring closure to all necessary issues
10 efficiently.

11 Let me pose the following question, and I
12 think I characterize it right, in the sense that however
13 you decide or however you propose that these issues get
14 teed up, if I were to accept a proposal that says tee
15 these up individually, expect after the tee up there is
16 going to be, or before, there is going to be a meet and
17 confer with respect to the issue of the number of days
18 to take exceptions to each discrete piece of work, and
19 even if you all land on the same date or if I am asked
20 to recommend something to Judge Farnan where you cannot
21 agree to the same number of days, it's self-evident that
22 I am in no position, nor would I think the Court, even
23 acting on his own, I don't expect that the Court is
24 going to commit to a date certain to issue a final.

Hearing

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1 determination of any findings and recommendations that I
2 make.

3 I mean, I don't expect anyone disagrees with
4 that. Am I correct?

5 MR. CHRISTENSON: LPL does not disagree with
6 you.

7 MR. MILLER: ViewSonic does not disagree
8 with you either, Your Honor.

9 SPECIAL MASTER POPPITI: So my proposal goes
10 something like this: However we decide to serve these
11 up, I am wondering if it doesn't make more sense to
12 write them as preliminary findings and recommendations
13 so that there is an opportunity to finish it all or
14 finish important segments of it before moving onto the
15 next segment or finishing it all so that what we wind up
16 with is something that is either final from my desk for
17 purposes of having Judge Farnan look at the whole
18 process. Otherwise, if you take each of the matters
19 that are before the Court and matters that can be
20 expected to be before the Court, you have six or seven,
21 maybe less, five or six discrete applications with five
22 or six different findings and recommendations and five
23 or six deadlines, not running in tandem, but running
24 chronologically after each other for Judge Farnan to

Hearing

Page 6

1 turn his attention to.

2 And given, you know, given the busyness of
3 the Court's docket, there is certainly no way that I am
4 going to be in a position to suggest a time frame when
5 everyone could expect seeing decisions from Judge
6 Farnan. And I don't think he would -- I don't think he
7 would do anything different than do what he does, and,
8 that is, he turns to them when he turns to them and he
9 decides them when he decides them.

10 And I could see a process that would
11 protract the work that I may be called upon to do, and I
12 want to talk about that in a moment, through the
13 springtime.

14 But my first question is: Talk to me a bit
15 about a process that handles this a little differently
16 for purposes of serving things up to -- or being ready
17 for you to take any action you choose to take before
18 Judge Farnan.

19 MR. MILLER: Your Honor, perhaps I could
20 address that first.

21 SPECIAL MASTER POPPITI: Yes, please.

22 MR. MILLER: If our -- I am not sure that
23 our letter was as clear as I hoped it was going to be
24 because I didn't envision the process that we were

Hearing

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1 talking about in our proposed schedule as being a
2 piecemeal process, if you will. It seemed to me that
3 there was one sort of issue that hopefully the parties
4 will agree to and won't be a dispute, and that would be
5 the time for taking exception to any ultimate report
6 that you would make, and that might be on a faster track
7 if there wasn't any resolution of that by agreement
8 between the parties.

9 But other than that, I mean, our proposal
10 was that while we would have a staggered period for
11 briefing to be done, they would all be completed and
12 heard at the same time so that Your Honor would have
13 before you the five or -- the four or five different
14 matters. And while they are somewhat discrete, there is
15 a significant relationship between the number of those
16 issues and matters, even though they may be discrete
17 motions.

18 SPECIAL MASTER POPPITI: Right. There
19 certainly is a significant relationship enough so -- and
20 I perhaps should have said this at the front end of this
21 -- that Judge Farnan agrees that all of those matters,
22 including the dualing motions to dismiss, should be
23 before me in the first instance.

24 MR. MILLER: I think, from our standpoint,

Hearing

Page 8

1 Your Honor, we did not envision that there would be
2 multiple hearings and decisions rendered by Your Honor
3 with the potential exception of this issue about if the
4 parties can't come to agreement as to the time to take
5 exception from any reports that will be issued at the
6 end of the process.

7 I know when we spoke on the phone the other
8 day, I was speaking off the top of my head about
9 possible meet and confers during the course of the
10 process, and I think, as we were going over the schedule
11 on our side and the schedule that we ultimately
12 submitted, did not have that in it because it did seem
13 like it was too much of a stop and go kind of process.
14 And that what would be better for efficiency would be to
15 have the motions briefed over the period of time and
16 submit it to Your Honor so that, at the end, you could
17 have all the motions in front of you and decide whether
18 you are going to have one hearing or if you want to
19 break it into pieces for a hearing for some reason, and
20 then make the decisions that would be available for you
21 to be able to make at that point in time.

22 The one sort of potential carryover would be
23 the issue about if there is some missing discovery that
24 needs to take place as a result of, once you have all

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1 the motions in front of you, and how that would -- how
2 that would happen. And I think that, from our
3 standpoint, we believe the question of the entitlement
4 to additional discovery will be fully briefed by the
5 issues that are framed by the current matters that are
6 going to be before Your Honor. And I think that none of
7 the cases that have been cited in any of the proceedings
8 have a circumstance like we have here where discovery
9 has been court ordered, it had not been presented as --
10 court ordered a second time as well as the deposition of
11 the MLA firm had been ordered on behalf of the
12 defendant.

13 And to the extent that the discovery issues
14 that would potentially surface at the hearing, and we
15 don't know if they are going to surface, we think there
16 is going to be enough evidence that they won't be
17 necessary to surface, but to the extent they are
18 surfacing and at issue at the time of the hearing, the
19 Court at that point in time would then either have to
20 direct the -- it would have the briefing about the
21 entitlement to discovery through the other motions
22 pending before you, you would be able to either decide
23 that you could resolve the discovery issues on the basis
24 of the pending motions or that additional discovery was

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1 going to be required to address those issues to see
2 whether or not the motion can be granted or has to be
3 denied.

4 At that time, Your Honor could look at the
5 motion that would be pending just looking, for example,
6 at the attorneys' fee motion, you could look at it and
7 say, Based on the accumulation of evidence that's here,
8 we believe -- I believe that this is an exceptional
9 case, and having made that finding now, I will address
10 the issue of attorneys' fees. Or, secondarily, Your
11 Honor could look at that and say, Looking at all of the
12 evidence, at any evidence that is missing, that could
13 have been obtained through the discovery that was
14 previously court ordered, and all of that accumulated
15 together doesn't tip the scale far enough, under my
16 understanding of the law, to make this an exceptional
17 case, and, therefore, I am going to deny the motion,
18 that subsequent discovery wouldn't be needed at that
19 point in time until Judge Farnan disagreed with that
20 conclusion, obviously.

21 SPECIAL MASTER POPPITI: Right.

22 MR. MILLER: Or you would say, There are
23 some pieces here that are missing which were within the
24 scope of the preexisting court ordered discovery that